from M, before exercising the option, leased the rights to the defendant for twenty years. The defendant entered and prepared to mine. D and S then organized the X corporation of which they became directors and owners of 95% of the stock. Through them the X corporation secured from M a lease of the same mining rights for twenty years. The X corporation sought to enjoin the defendant from removing coal. *Held,* for the defendant. *Burnett Coal Mining Co.* v. *Schrepferman* (1921 Ind.) 133 N. E. 34.

A lessor is estopped from asserting against his lessee an after-acquired title. *Webb* v. *Austin* (1845) 7 Man. and G. 700. It has always been possible to convey a subsequently acquired interest by operation of the estoppel without the aid of equity. See *McAdams* v. *Bailey* (1907) 169 Ind. 518, 82 N. E. 1057. A subsequent grantee, though an innocent purchaser for value, is bound by the estoppel. *White* v. *Patten* (1840) 41 Mass. 324; *Teffy* v. *Munson* (1874) 57 N. Y. 97; *contra, Calder* v. *Chapman* (1866) 52 Pa. St. 359. Thus the after-acquired title actually passes, or "feeds the interest by estoppel." See *Webb* v. *Austin, supra,* 727. The grantor cannot defeat the estoppel by procuring title to the after-acquired property to be taken in the name of the third person. *Collins* v. *Buffalo Ry.* (1911) 145 App. Div. 148, 129 N. Y. Supp. 139. In the *Collins* case, the third person paid nothing and took no part in the transaction. Here the corporation secured the lease and bound itself through its authorized agents. The court ignored the corporate existence of X and held that it was also estopped. The owner of all the corporate stock does not thereby own the corporation's property. *Button* v. *Hoffman* (1884) 61 Wis. 20, 20 N. W. 667; *Saranac & L. P. R. R.* v. *Medina Gas Co.* (1900) 162 N. Y. 67, 56 N. E. 505; *contra, Swift* v. *Smith* (1886) 65 Md. 428, 5 Atl. 534. But where the property is transferred to the corporation for the purpose of defeating the claimant's rights the entity will be disregarded. *Montgomery Web Co.* v. *Dinelt* (1890) 133 Pa. St. 585, 19 Atl. 428. Regarding the X corporation as D and S acting under another name, the defendant's title is protected by the estoppel. See *Rutz* v. *Obear* (1911) 75 Cal. App. 435, 115 Pac. 67. The instant case is correctly decided.

COURTS—COUNTERCLAIM IN EXCESS OF COURT'S JURISDICTION.—The now defendant brought an action against the now plaintiff in the Municipal Court. The latter set up a counterclaim for $3000. The jury found for him on the counterclaim, and the court allowed a judgment to be entered for $1000. Suit is now for the balance. *Held,* no recovery. *Silberstein* v. *Begun* (Ct. of App. 1922) 66 N. Y. L. J. 1526.

The jurisdiction of the New York City Municipal Court on counterclaims is limited to $1000. N. Y., Laws 1915, c. 279, § 86. The statute says nothing about the judgment being a bar to a subsequent action, but the former Municipal Court Act specifically allowed the subsequent action. N. Y., Laws 1902, c. 580, § 157. In general a defendant who has set up a counterclaim and had it adjudicated is barred by the judgment from bringing another action on it. *Srere* v. *Gottesman* (C. C. A. 1920) 270 Fed. 188; *Brinn* v. *Hindlemann, Inc.* (App. Div. 1922) 192 N. Y. Supp. 34. He would be confronted either with *res judicata* or the common law antipathy to splitting causes of action. See (1922) 22 COLUMBIA LAW REV. 180. As a rule a defendant is not required to set up his claim against the plaintiff as a counterclaim but may wait and sue on it as a separate action. *Hathaway* v. *Ford Motor Co.* (C. C. A. 1920) 264 Fed. 952. Some states require a defendant in a court of limited jurisdiction to plead any counterclaim he may have. *Stout* v. *Martin* (1920) 87 W. Va. 1, 104 S. E. 157. But if the claim would exceed the court's jurisdiction he is not required to plead it. *Harrison* v. *Dickerson* (1916) 89 N. J. L. 712, 99 Atl. 325. It would seem that the interpretation of the statute

given in the instant case follows the general idea of such statutes throughout the states. The correct procedure for a defendant having a counterclaim in excess of the court's jurisdiction seems to be to suffer judgment and bring another action in the appropriate court.

DEBTOR AND CREDITOR—SALE OF LAND—PREMATURE TENDER BY VENDEE.—A contract for the sale of land provided for specified payments on the purchase price annually, with interest on the unpaid portion, and conveyance of the premises upon payment of half of the total. The purchaser tendered payments in advance and upon the vendor's refusal to accept, brought a bill to compel conveyance. *Held,* for defendant. *Peryer* v. *Pennock* (Vt. 1921) 115 Atl. 105.

The vendor of a chattel is not compelled to receive a portion of the purchase price not yet due and earning interest. *Morgan* v. *East* (1890) 126 Ind. 42, 25 N. E. 867. But he may waive his right and accept payment before maturity. See *Alexander* v. *Herndon* (1909) 84 S. C. 181, 185, 65 S. E. 1048. A tender by a mortgagor before the date of maturity, which is rejected by the mortgagee, has no effect on the jural relations of the parties. *Chicago & I. R. R.* v. *Pyne* (C. C. 1887) 30 Fed. 86. This is generally so, even though the full amount of the mortgage with interest to the date of maturity, is tendered. *Pyross* v. *Fraser* (1909) 82 S. C. 498, 64 S. E. 407. From an economic point of view a mortgage loan differs from a sale on credit in that the former is usually of benefit to the creditor as well as the debtor, while the latter is usually primarily for the accommodation of the purchaser. It follows that the same reasons of policy which prohibit premature tender, even with interest in full, by a mortgagor, do not necessarily apply. If a vendee debtor can show some definite and proximate probability of hardship unless permitted to make immediate payment, and if time is immaterial to the creditor, the latter should be compelled to accept payment. A tender of interest to maturity in such a case, might well remove a reason for regarding time as material. In the instant case, its immateriality is not apparent and the decision is sound. *Cf. Hanson* v. *Fox* (1909) 155 Cal. 106, 99 Pac. 489.

DOWER—MECHANICS' LIEN—PRIORITY.—In an action to marshall liens, the plaintiff, holder of a mechanics' lien, claims priority over the defendant's right of dower. *Held,* for the defendant. *Glassmeyer* v. *Michelson* (1921) 23 Ohio N. P. (N. S.) 537.

Dower is generally given priority over other claims which arise against an estate after marriage, the reasons assigned being that "dower is a favorite of the law" and that the inchoate doweress is "passive" and "can do nothing to protect her rights." See *Johnston* v. *Dahlgren* (1895) 14 Misc. 623, 624, 36 N. Y. Supp. 806; *Bishop* v. *Boyle* (1857) 9 Ind. 169, 171. But dower is subordinated to purchase money security. *Harrow* v. *Grogan* (1905) 219 Ill. 288, 76 N. E. 350 (purchase money mortgage); *Roush* v. *Miller* (1894) 39 W. Va. 638, 20 S. E. 663 (trust deed); *Bothe* v. *Gleason* (1916) 126 Ark. 313, 190 S. W. 562 (vendor's lien). The mechanics' lien, however, is generally subordinate to the inchoate right of dower. *Johnston* v. *Dahlgren, supra; Stewart, etc.* v. *Whicher* (1914) 168 Iowa 269, 150 N. W. 64. But in one case it has been given priority as to improvements on the ground that the lien attached to them as the work progressed and that, as the husband had no right to the improvements unencumbered, the doweress could be in no better position. *Nazereth Lit. & Benev. Inst.* v. *Lowe* (Ky. 1841) 1 B. Mon. 257. But the general view does not regard a mechanics' lien as attaching only to improvements. It is rather a privilege of foreclosing for the claim against the realty improved as well as against the improvements. See Rockel, *Mechanics' Liens* (1909) § 2; New York Lien Law § 3. These as a